

REMARKS

Entry of the foregoing and reexamination and reconsideration of this application, as amended, pursuant to and consistent with 37 C.F.R. § 1.112 are respectfully requested. This reply and amendment is a submission filed in conjunction with a concurrently filed Request for Continued Examination.

Claims 1-52 were pending and rejected in this application. With the filing of this amendment, claims 41 and 43 have been canceled, and claims 1, 16, 17, 29, 44, 45, 47, and 51 have been amended. Thus, claims 1-40, 42, and 44-52 are currently pending.

Claims 1 and 17 have been rejected pursuant to 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. According to the Examiner, incorporation by reference to specific figures is not proper. The Examiner draws Applicant's attention to M.P.E.P. § 2173.05(s) to support the rejection. With all due respect, however, § 2173.05(s) begins "[w]here possible . . . ." *Id.* Incorporation by reference is permitted where it is more concise to incorporate by reference than by, for example, duplicating a drawing or table into a claim. See *id.* Here, claims 1 and 17 refer to reference spectral reflectants C or M as defined in Figure 4. A brief review of Figure 4 proves the old maxim that a picture can be worth 1000 words. It certainly would be more difficult to describe the reference spectral reflectants C or M absent some reference to the figure. Applicant also notes that U.S. Patent No. 6,760,200 refers to Figure 1 in claim 1, and that claim is very similar conceptually to the claims of the present application. Moreover, Applicant has run a computer search for U.S. patents containing the word containing the word figure or "fig" in claims and found that more than 17,000 U.S. patents have issued with such claims. Accordingly, the practice is far from rare.

Applicant respectfully submits that the claims as written, including the reference to Figure 4, are clear and definite and would be understandable to those of ordinary skill in the art. No more is required from such claims.

Claims 1, 9-13, 16-23, 26, 29-30, 32-34, 36-37, 39-45, 47, 49, and 51 have been rejected pursuant to 35 U.S.C. § 102 as allegedly being anticipated by Simon, WO 00/75240. As that rejection would be applied to the claims as amended, Applicant respectfully traverses. Independent claims 1, 17, 29, 33, and 36 now claim a multilayer structure including at least one layer which totally coats an underlying layer. This does not mean that this must occur on every particle. However, clearly that is the objective.

Reference is made to Figures 1 and 2 of the present application which aptly illustrate that at least one upper layer, if not more, totally coats an underlying layer so that, as at least for one layer there are no zones of the underlying(s) layer which are visible or exposed.

Applicant respectfully submits that Simon teaches the particles of pigment comprise an upper layer which do not coat completely the underlying layer. More precisely, the upper layer does not cover the underlying layer in the zones of fragmentation of the multilayer film caused during the formation of the particles. See, for example, Figure 3 of Simon. Please also see page 19, lines 18-22 of the English language translation of WO 00/75240 provided by the office:

The multilayer structure may be made by depositing successive layers of the desired materials onto a flexible support. Thus formed, the coating is then separated from the support in order to fragment it and make the elementary pigment particles. This fragmentation process would expose underlying coating layers.

In addition, and again with reference to the translation, Simon identifies EP 0 277 423 which describes "a method for

making pigments composed of elementary particles having a multilayer structure." Simon at p. 18, lns. 8-10. Page 1, lines 43-44 of EP 0 277 423 in turn describes a method for making pigments composed of elementary particles having a multilayer structure which fragments a thin film into flakes. This fragmentation exposes underlayers which will not result in the particles of the invention. As such, Simon cannot anticipate the claims as amended.

Claims 2, 3, 8, 14, and 15 were rejected as being unpatentable over Simon in view of Qunaian et al., U.S. Patent No. 5,082,660, and claims 4 and 5 were rejected as being unpatentable over Simon in view of U.S. Patent Appln. No. 2003/0035883 to Nishikata et al. Claims 4-7 were rejected pursuant to 35 U.S.C. § 103(a) as being unpatentable over Simon in view of U.S. Patent Appln. No. 2003/0147820 to Bertaux et al. Finally, claim 6 was rejected pursuant to 35 U.S.C. § 103(a) over Simon in view of Nishikata as applied to claim 4 and further in view of Aoyagi et al., U.S. Patent No. 5,635,574.

It is Applicant's position, however, that none of the secondary references teach or suggest the use of a complete coating as currently claimed. Accordingly, they do not cure the deficiencies identified above in connection with Simon.

Furthermore, there is no reason apparent from the current record why one of ordinary skill in the art would forego the clear teachings of Simon to use a fractured coating and substitute therefor a complete coating as described and currently claimed. Therefore, even if one of the secondary references taught such a coating, the art applied by the examiner does not, singularly or in combination, provide any basis upon which to combine such a teaching with Simon, thereby negating one of Simon's express elements. Accordingly, the Patent Office has not carried its burden of establishing a *prima facie* case of obviousness.


From the foregoing, further and favorable action in the form of a notice of allowance is believed to be next in order and such action is earnestly solicited.

If, however, for any reason the examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

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